



## What does GRAMA say about sharing records?

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Utah State Archives

November 12, 2013

Part Two of the Government Records Access and Management Act, “Access to Records,” outlines requirements for sharing records. Sharing a record means providing private, controlled, or protected records or information to another governmental entity or to a contractor or private provider. Records- sharing differs from GRAMA requests in that the recipient is not a member of the public, but is another governmental entity or is a contractor or private provider employed by a governmental entity.

**Utah Code Section 63G-2-206(1-3)** “A governmental entity may provide a record that is private, controlled, or protected to another governmental entity, a government-managed corporation, a political subdivision, the federal government, or another state if the requesting entity... [meets certain requirements]:

### Who can receive access to shared records?

The law states that providing access to private, controlled, or protected records is allowed when the receiving governmental entity is:

- a. Entitled by law to inspect the records
- b. Required to inspect the record as a condition of participating in a state or federal program or for receiving state or federal funds (Utah Code Section 63G-2-206(3)(a)).
- c. One of the following:
  1. A repository or archives for purposes of historical preservation, administrative maintenance, or destruction;
  2. An entity that litigates, or investigates civil, criminal, or administrative law, and the record is necessary to a proceeding or investigation;
  3. An entity that is authorized by state statute to conduct an audit and the record is needed for that purpose;
  4. The Legislature, a legislative committee, a member of the legislature or a legislative staff member when the record is in relation to the Legislature’s duties (Utah Code Section 63G-2-206(1)(a-d)).

The law cannot contemplate every possible situation in which sharing records is appropriate and therefore, it provides additional possibilities. When none of the above apply, private; protected; or controlled records can be shared if the recipient governmental entity provides **written assurance** that:

- a. The record or record series is necessary to the performance of the governmental entity's duties and functions,
- b. The record or record series will be used for a purpose similar to the purpose for which the information in the record was collected or obtained, and
- c. The use of the record or record series produces a public benefit greater than or equal to the individual privacy rights being protected (Utah Code Section 63G-2-206(2)).

### **Can records be shared with contractors or private providers?**

Records can also be shared with contractors and private providers. A contractor is a person who contracts with a governmental entity to provide goods and services directly to the governmental entity, or a private, nonprofit organization that receives funds from a governmental entity. A private provider is a person who contracts with a governmental entity to provide services directly to the public (Utah Code Section 63G-2-103(5)(18)). Records can be shared with contractors and private providers only when the recipient's use of the records produce a public benefit that is greater than or equal to the individual privacy rights protected, and when the contractor or private provider gives **written assurance** that:

- a. The record is necessary for the performance of a contract with a governmental entity,
- b. The record will only be used for the performance of the contract,
- c. The recipient agrees not to disclose the record to any other person,
- d. The recipient agrees not to use the records for advertising or solicitation purposes (Utah Code Section 63G-2-206(6)).

### **Is a written agreement necessary?**

Before sharing records that may be protected, controlled, or private, a governmental entity must inform the recipient of the record's classification and accompanying access restrictions. This notification should be in writing.

**Utah Code Section 63G-2-206(4)** "Before disclosing a record or record series under this section to another governmental entity, another state, the United States, a foreign government, or to a contractor or private provider, the originating governmental entity shall: (a) inform the recipient of the record's classification and the accompanying restrictions on access; and (b) if the recipient is not a governmental entity to which this chapter applies, obtain the recipient's written agreement which may be by mechanical or electronic transmission that it will abide by those restrictions on access unless a statute, federal regulation, or interstate agreement otherwise governs the sharing of the record or record series...."

When the recipient is another state, the federal government, or another entity not subject to GRAMA, the sharing governmental entity must obtain the recipient's **written agreement** that it will abide by access restrictions. A written agreement is required unless another statute, federal regulation, or interstate agreement already governs the sharing of records.

In order to facilitate record sharing, the Utah State Archives has created record sharing forms which can be used to notify the recipient of the shared record's classification or to document a record sharing agreement between governmental entities, or between contractors or private providers. These forms are available: ([link](#))

### **Who provides access to shared records in the event of a GRAMA request?**

GRAMA states that "A person making a request for a record shall submit the request to the governmental entity that prepares, owns, or retains the record."

**Utah Code Section 63G-2-204(2)** (a) Subject to Subsection (2)(b), a person making a request for a record shall submit the request to the governmental entity that prepares, owns, or retains the record.

(b) In response to a request for a record, a governmental entity may not provide a record that it has received under Section 63G-2-2-6 as a shared record if the record was shared for the purpose of auditing, if the governmental entity is authorized by state statute to conduct an audit. ...

(d) A governmental entity may make rules in accordance with Title 63G-Chapter 3, Utah Administrative Rulemaking Act, specifying where and to whom requests for access shall be directed."

In Utah Code Section 63G-2-204(2), the words "prepare" and "own" suggest that a request should be made to the governmental entity in which the record originated. However, a shared record might be "retained" by a recipient governmental entity. It is up to the governmental entities involved to determine how they will handle access. At the time records are shared it will be good for sharing entities to determine how records requests will be handled. GRAMA suggests making an Administrative Rule to govern this.

Subsection 6 states that the receiving entity is subject to the same restrictions on disclosure as the originating entity. This suggests that it is the responsibility of the originating agency to determine how shared records should be classified.

**Utah Code Section 63G-2-204(6)** (a) Subject to Subsection (6)(b) and (c), an entity receiving a record under this section is subject to the same restrictions on disclosure of the record as the originating entity."

### **What are additional guidelines in GRAMA about providing access to shared records?**

One possible response to a GRAMA request is to notify the requester that because of extraordinary circumstances, it cannot immediately approve or deny a request. The first listed extraordinary circumstance is “(a) another governmental entity is using the record, in which case the originating governmental entity shall promptly request that the governmental entity currently in possession, return the record” (Utah Code Section 63G-2-204(5)). If retrieving a record from a recipient agency is necessary, then GRAMA allows five extra days for a governmental entity to respond to a GRAMA request. (See Utah Code Section 63G-2-204(5)(a), and (6)(a)). However, if returning the record would impair the holder’s work, parties may extend the response time by mutual agreement.